

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DIANE O. SWIFT,
DALE E. RUCKMAN,

Respondents,

v.

PAUL D. GROOM,

Appellant.

No. 33565-4-II

UNPUBLISHED OPINION

Hunt, J. - Paul Groom appeals the trial court's decision that a mobile home and the real property site on which it is located are assets of his mother's estate. Groom argues: (1) he is the legal owner of the mobile home and of the land because his mother had transferred the home and land to him, even though she continued to live there, (2) the trial erred in finding he held the property in trust for his mother's estate, (3) the evidence is insufficient to support the trial court's factual findings, (4) the trial court abused its discretion in admitting two letters Ruckman had written, and (5) the trial court violated RCW 5.60.030 by allowing Diane Swift and Dale Ruckman, Ruckman's other two adult children, to testify about their conversations with Ruckman. We affirm.

FACTS

I. Mobile Home and Land

Shirley Ruckman (Ruckman) owned a mobile home that was originally located on a rented lot in a mobile home park in Kent, Washington. In April 1981, she transferred the mobile home's title to her son, Paul Groom (Groom), so she could qualify for welfare and avoid estate taxes. But she continued to live in the home.

In 1986, Ruckman moved her mobile home onto land that she had purchased. In 2001, she executed a quit claim deed to the land to Groom. None of Ruckman's children paid for any portion of her mobile home or her land.

On January 21, 2004, Ruckman died without a will. Diane Swift (Swift) and Dale Ruckman (Dale)¹ visited Ruckman in the hospital before she died, at which time Ruckman told them that she wanted her property divided equally among her three children. Ruckman told the same thing to her friend Teresa Loken at the hospital. Groom arrived at the hospital shortly after Ruckman died.

Ruckman's children, Swift, Dale, and Groom, are her only lawful heirs. Swift and Dale took some of Ruckman's personal property from her mobile home, including china and pictures. Groom and his fiancé hired movers to take the rest of Ruckman's personal property for themselves, including furniture, televisions, and a computer.

Claiming that he was the sole owner, Groom refused to divide ownership of Ruckman's mobile home and her land equally with Swift and Dale.

¹ We use Dale Ruckman's first name to avoid confusion with his late mother, Shirley Ruckman.

II. Procedural History

Swift and Dale filed a notice of lis pendens on the property and sued Groom for refusing to divide the property equally with them.² At the bench trial, Swift and Dale testified that: (1) Ruckman had always wanted her property to be divided among her three children, which intent she had reiterated to them at the hospital before she died; and (2) they first knew Ruckman wanted her property divided equally among her three children when Ruckman mentioned this in a 1981 letter, in which she also explained that she had given Groom title to her mobile home in order to qualify for welfare and to avoid estate taxes.

Dale further testified that Ruckman had struggled financially and could not work after 1997 or 1998. Swift testified that Ruckman was concerned about creditors, thought her creditors could not touch her home because it was in Groom's name, and worried that the State could take her property if she could not pay her taxes.

Ruckman's friend and former co-worker, Teresa Loken, testified that shortly before Ruckman died, she told Loken that she wanted Loken to have power of attorney over her estate and that Ruckman mentioned wanting to give her property to her three children.

Groom agreed with Swift and Dale that Ruckman had struggled financially. But he testified that: (1) Ruckman had not transferred her property to him because of creditors; (2) he did not know whether Ruckman had executed this property transfer to prevent the State from taking her property; (3) Ruckman made it clear that she wanted him to have her property and

² The record does not reflect whether the parties instituted probate proceedings or whether there was a court-appointed personal representative of Ruckman's estate.

trailer because he was the only person who had been there for her; (4) Ruckman's 1981 letter indicated that she wanted him to have her mobile home as a gift; (5) he had helped Ruckman pay for repairs, had paid some of the monthly mortgage, and had paid Ruckman's property taxes directly; (6) he did not pay Ruckman any money for the property; (7) Ruckman lived in the mobile home alone; (8) she had control over the property to do with as she wanted as long as she was alive, including renting or selling the property; and (9) he considered Ruckman to be the true owner.

Initially, Groom testified that he did not take Ruckman's personal belongings from her mobile home, including the refrigerator, washer, dryer, or furniture, stating that her mobile home had been invaded and ransacked. He also stated that he did not hire a moving company. But he changed his testimony (1) after Dale testified that Groom had left a note on the mobile home's door stating, "Movers, do not forget generator, [Groom]," Report of Proceedings (RP) at 105; and (2) after Ruckman's friend, Linda Macoubrie, testified that Groom had coordinated with her to have movers take Ruckman's belongings. According to Macoubrie, Groom cleaned the yard, changed the locks, and directed her to take two loads of trash to the dump,.

Following Dale's and Macoubrie's testimonies, Groom testified again. This time he stated that: (1) his fiancé had arranged for the movers; (2) the movers had taken Ruckman's personal property, including beds, a couple of televisions, an end table, lamps, two couches, and a computer from Ruckman's mobile home; and (3) he and his girlfriend thought hiring movers "was the best thing that should be done." RP at 142.

Ruckman's attorney, Ahmet Chabuk, testified that he had helped Ruckman transfer her

land to Groom in 2001, and that Groom did not pay Ruckman any money for her property. He stated, “[I]t was clear-cut to me [that] [i]t was a gift.” RP at 114.

The trial court determined that Groom held Ruckman’s property under a resulting trust and awarded it to her estate to be divided according to intestate succession. The trial court denied Groom’s subsequent motion for reconsideration.

Groom appeals.

ANALYSIS

I. Evidentiary Issues

A. Ruckman’s Letters

Groom argues that the trial court erred in admitting two letters that Ruckman wrote in 1981 and 1990. He contends that the 1981 letter was hearsay and that the 1990 letter was irrelevant. But other than these mere assertions, he provides no argument and no authority as to why admitting these letters was reversible error. Therefore, we do not address these unsupported arguments on appeal. *See* RAP 10.3; *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (we need not consider issues not supported by sufficient argument or authority).³

³ Even were we to consider these issues, we fail to see any abuse of discretion by the trial court. *State v. Pirtle*, 127 Wn.2d 628, 648, 904 P.2d 245 (1995) (admission of exhibits are reviewed for abuse of discretion), *cert. denied*, 518 U.S. 1026 (1996). Ruckman’s 1981 letter, Exhibit 1, shows her intent in transferring her mobile home to Groom *at that time*, which was admissible under ER 803. *See State v. Hawkins*, 53 Wn. App. 598, 603, 769 P.2d 856 (1989). Exhibit 1 was also admissible as a statement against her interest because it demonstrated that Ruckman wanted to misrepresent her assets to qualify for welfare and, possibly, to evade taxes. *See* ER 804(3). Likewise, Ruckman’s 1990 letter, Exhibit 2, demonstrates Ruckman’s relationship with Swift and Dale and confirms Ruckman’s financial struggle, which were directly relevant to her reason for transferring her property to Groom.

B. Swift's and Dale's Testimony

Groom argues that the trial court violated the Dead Man's Statute, RCW 5.60.030,⁴ by allowing Swift and Dale to testify about their communications with Ruckman. This argument also fails.

Groom himself introduced evidence of communications he had with his mother about her intent to transfer her property to him. He thereby waived any protection afforded to him under RCW 5.60.030. *See Bentzen v. Demmons*, 68 Wn. App. 339, 345, 842 P.2d 1015 (1993) (protection of the statute may be waived when the protected party introduced evidence concerning a transaction with the deceased). Accordingly, we hold that the trial court did not violate RCW 5.60.030.⁵

⁴ RCW 5.60.030 provides, in pertinent part:

No person offered as a witness shall be excluded from giving evidence by reason of his or her interest in the event of the action, as a party thereto or otherwise, but such interest may be shown to affect his or her credibility: Provided, however, That in an action or proceeding where the adverse party . . . defends . . . as deriving right or title by, through or from any deceased person, . . . [a party] shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased . . . person

⁵ Our holding presumes, without deciding, that RCW 5.60.030 applies. First, Groom testified solely on his own behalf, claiming title to the property through his own right as title holder, not as a party who had derived property rights or title through the deceased or as the deceased's representative. *See First Nat'l Bank v. Melberg*, 154 Wash. 69, 71-72, 280 P. 745 (1929) (protection applies to one who derives right or title through deceased); *Bentzen*, 68 Wn. App. at 345 (must be a protected party to invoke the rule). Because Groom is not a protected party under the statute, he cannot rely on RCW 5.60.030.

Second, Swift and Dale wanted their mother's property to be awarded back to her estate to be divided equally among her three children. Thus, their testimony is arguably in favor of Ruckman's estate and, therefore, is not prohibited under RCW 5.60.030. *See Hampton v. Gilleland*, 61 Wn.2d 537, 542, 379 P.2d 194 (1963); *see also Thor v. McDearmid*, 63 Wn. App.

II. Substantial Evidence

Groom next argues that the evidence is insufficient to support the trial court's factual findings, including (1) Ruckman's having been solely responsible for maintenance and improvements to her mobile home and land, (2) Groom's having taken a majority of Ruckman's personal possessions, (3) Groom's not having paid any money to Ruckman in consideration for transferring her real estate to him in 2001, (4) Ruckman's having been able to do whatever she wished with her property without interference from Groom, (5) Ruckman's letter describing that she transferred her mobile home to Groom to avoid potential creditors and to qualify for government assistance from Washington State, and (6) Ruckman's intent that all three of her children inherit her estate in equal shares.⁶ We disagree.

A. Standard of Review

We review findings of fact under the substantial evidence standard, which means we look at the record to determine whether it is sufficient to persuade a fair-minded person that the fact is true. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). If the standard is met, we will not substitute our judgment for that of the trial court, even though we might have resolved the factual dispute differently. *Croton Chem. Corp. v. Birkenwald, Inc.*, 50 Wn.2d 684, 685, 314 P.2d 622 (1957).

193, 199, 817 P.2d 1380 (1991).

⁶ Groom also appeals the trial court's factual finding that he "may have perjured himself" and that "the credibility of his testimony is questioned." Br. Of Appellant at 1. Credibility determinations, however, are not subject to review on appeal. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

B. Findings

Groom admitted many of the trial court's factual findings that he now disputes, including: (1) not having handled Ruckman's property upkeep and maintenance, other than to help pay for repairs, (2) having taken furniture and appliances from Ruckman's mobile home after her death, (3) not paying for Ruckman's mobile home and land, and (4) Ruckman's control over the property.

In addition, in her 1981 letter, Ruckman clearly stated that she transferred her home to Groom, at least in part, to qualify for welfare and to avoid paying taxes. Consistently, Swift and Dale testified that Ruckman had transferred her mobile home and land to Groom to prevent creditors and Washington State from taking her property. Lastly, three witnesses testified that Ruckman intended to divide her property equally among her three children.

The trial court had more than sufficient evidence to support its factual determinations. Therefore, we uphold the trial court's findings of fact.

III. Resulting Trust

Lastly, Groom argues that, because Swift and Dale failed to prove by clear, cogent, and convincing evidence that Groom held the property under a resulting or constructive trust, the trial court erred in awarding the mobile home and land to Ruckman's estate. Again, we disagree.

A resulting trust arises where a property owner transfers title such that we can infer the owner intended the recipient should not have a beneficial interest in the property or other rights of property ownership. *See Manning v. Mt. St. Michael's Seminary of Philosophy & Sci.*, 78 Wn.2d 542, 544-45, 477 P.2d 635 (1970). For instance, we may infer a resulting trust where a person

has paid consideration for the property but transfers title to the property to another without receiving consideration. *Manning*, 78 Wn.2d at 546. The party claiming a resulting trust, here, Swift and Dale, must prove its existence with clear, cogent, and convincing evidence. *In re Estate of Spadoni*, 71 Wn.2d 820, 822-23, 430 P.2d 965 (1967).

Swift and Dale met this burden. Groom did not purchase the mobile home and land. He did not pay Ruckman for transferring the property to him. Nor did he take responsibility for her mobile home's upkeep, maintenance, or improvements. Moreover, Groom acknowledged that Ruckman could do whatever she wanted with her property, even after she transferred title to him.

In 1981, Ruckman transferred her mobile home title to Groom; but she also indicated at that time that she wanted her estate to be divided among her three children, despite the transfer of title to Groom. Consistent with her 1981 letter, Ruckman verbally reiterated this intent in 2004, shortly before she died. Although Groom disputes the facts, we defer to the trier of fact on matters concerning credibility of witnesses, conflicting evidence, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

Having already affirmed the trial court's factual findings, we agree with the trial court that Swift and Dale proved by clear, cogent, and convincing evidence that Ruckman retained ownership of the mobile home and land and that her transfer of title to Groom created a resulting trust. Therefore, we hold that Groom held Ruckman's mobile home and land only as a trustee. We affirm the trial court's order awarding the mobile home and the land to Ruckman's estate and the trial court's denial of Groom's motion for reconsideration.⁷

⁷ Because we affirm the trial court's ruling that Groom held the property under a resulting trust, we do not reach the moot issue of whether there was a constructive trust.

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Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Armstrong, J.

Van Deren, A.C.J.